IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
CASE NO. 25-7057

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

v.

ASHLIE NICOLE ROSE MARTIN,
Defendant/Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA,
THE HONORABLE DAVID CLEVELAND JOSEPH, U.S. DISTRICT JUDGE,
PRESIDING
DISTRICT COURT CASE NO. CR-23-59-DCJ

REPLY BRIEF OF DEFENDANT/APPELLANT

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1. *This case presents a unique factual background, given that two of the three co-conspirators were juveniles at the time of the crime and Ashlie Martin did not participate in the murders.*

In early December of 2020, 17-year-old Ashlie Martin believed herself to be pregnant. She knew that to raise a child with her boyfriend, 15-year-old Bryson Miller, she would have to escape the neglect and abuse of her parents. (ROA Vol. II at 267) To accomplish this, she believed her parents would have to die. Ashlie and Bryson had attempted to run away before, but the police picked them up and brought them home. (*Id.* at 275) The two juveniles therefore began to plan the murders. (*Id.* at 267) However, Ashlie knew that she would not be able to commit the murders herself. Bryson agreed to do it, but he did not believe that he could kill both parents without help. (*Id.* at 232) He suggested that they enlist the assistance of Chad Volyes, who was about three years older than Bryson and the only adult co-conspirator. (*Id.*) Ashlie and Bryson asked Chad to help, and he agreed. (*Id.* at 232, 267) On the night of December 22, 2020, Bryson Miller and Chad Voyles carried out the plan and murdered Ashlie Martin's parents. (*Id.* at 266-67) All three were arrested shortly after the murders. (*Id.*)

Both co-conspirators cared for Ashlie Martin. Chad Voyles claimed to love her. (ROA Supp. I at 19) The district court considered the two young men's affection for Ashlie as a mitigating factor and gave them shorter sentences despite their active participation in the murders. *It does not follow that this mitigating evidence translates into*

aggravating evidence for Ms. Martin. Ashlie Martin told Bryson Miller that they would be able to run away and raise their child together, something they both wanted to do. There is no evidence that she promised anything to Chad Voyles.

Ashlie Martin's argument that she was less culpable than her co-conspirators is primarily based on the fact that first, she was a juvenile at the time of the offense; second, she did not directly participate in the act of killing her parents; and third, she did not control or dictate the details of how her parents were to be killed. The ultimate decision whether to carry out the murders, and details of how the victims would die, were in the complete control of Bryson Miller and Chad Voyles. Chad decided, all on his own, to set Curtis Martin on fire and burn him to death; Ashlie Martin had no hand in this decision. (ROA Vol. II at 267) Ms. Martin was not even there when they killed Curtis Martin, because she was waiting at an abandoned house. (*Id.*) Chad also made the decision to bring along his compound bow to kill Mr. Martin. (*Id.* at 267, 321) Neither of the two young men were forced to carry out the murders. All they had to do was say no when asked; instead, both co-conspirators enthusiastically participated in a plan to kill Ashlie Martin's parents. Despite her lessened culpability, Ashlie Martin received the longest sentence of the three co-conspirators.

2. There exists an unwarranted sentencing disparity between the two juvenile co-conspirators, Bryson Miller and Ashlie Martin.

Bryson Miller, the only juvenile co-conspirator other than Ashlie Martin, pleaded guilty to first degree murder. He was not "particularly" cooperative with law enforcement. (ROA Supp. I at 44) The district court sentenced him to serve 300 months in prison, 13 years less than Ashlie Martin. The district court calculated his total offense level at 42 with a corresponding range of 360 months to life, which was the same range as Ms. Martin. (Gov't brief at 18)

The district court considered Bryson Miller's age as a meaningful mitigator, but Ashlie Martin was also a juvenile. (Gov't brief at 18, citing to ROA Supp. I at 53) The district court emphasized the influence that Ashlie had on Bryson. (*Id.*) Whatever mitigating effect this had on Bryson, it was outweighed by his participation in both the planning and the commission of the murders. Ashlie and Bryson had similar motives for killing Ashlie's parents and discussed *their* joint plan in the days and weeks preceding the murders to run away and raise their child together. Yet it was Bryson, and not Ashlie, who acted violently. It was Bryson Miller's idea to recruit Chad Voyles into the conspiracy.[1] Bryson Miller told Chad Voyles what weapons they would use

[1] Bryson Miller told Ashlie Martin that "there was no way he could kill two grown-ass adults" and therefore suggested enlisting Chad Voyles' help. (ROA Vol. II at 320)

for the murders. (ROA Vol. II at 266) By all accounts, Ashlie could not stomach the thought of carrying out these murders herself. She was present in the house when her co-conspirators killed her mother, but she could not stand to watch it happen and hid in the bathroom. The government's brief uses the nefarious verb "lurked" to describe Ashlie's behavior in the bathroom, but the record indicated otherwise. (Gov't brief at 6) Bryson Miller said that Ashlie was so upset that she was "shaking" in the bathroom. (ROA Vol. II at 320)

Ashlie Martin left the property to wait in a nearby abandoned house while her co-conspirators killed her father. (ROA Vol. II at 268, 270) Bryson Miller and Chad Voyles committed horrific murders and have proven themselves capable of unspeakable violence. Ashlie Martin has demonstrated that she is not capable of the same acts of violence. Yet Ashlie Martin received a sentence 13 years longer than Bryson Miller, and 3 years longer than Chad Voyles. Her sentence is substantively unreasonable.

Ashlie Martin indicated in an interview that it was Bryson Miller who talked Chad Voyles into participating. (ROA Vol. II at 251)

3. There exists an unwarranted sentencing disparity between Chad Voyles, the only adult co-conspirator, and Ashlie Martin.

Even assuming – without evidence – that Ashlie Martin twisted Bryson Miller's arm into committing murder, she had no similar influence on Chad Voyles. Although Mr. Voyles claimed to be in love with Ashlie Martin, there is no evidence that Ms. Martin took advantage of this (or even that she was aware of his professed love). Mr. Miller recruited Mr. Voyles into the conspiracy because he needed help to kill Ashlie's parents. Mr. Voyles at one point claimed that Mr. Miller threatened to kill him if Mr. Voyles did not help. (ROA Vol. II at 266) Miller and Voyles – not Ashlie – dug the holes that were to serve as graves for her parents. (*Id.* at 268)

Chad Voyles committed two murders and was the only adult in the conspiracy, yet his sentence was 36 months less than Ashlie Martin's 456-month sentence. Mr. Voyles received the exact sentence asked for by his attorney – 420 months – after he pleaded guilty to first degree murder. (Gov't brief at 18) First degree murder carries a statutory mandatory life sentence. 18 U.S.C. § 1111(a). The applicable Guideline Range was life. (ROA Vol. III at 19) Chad Voyles was 18 at the time of the murders, which makes him an adult for sentencing purposes. *Miller v. Alabama,* 567 U.S. 460, 465 (2012), citing to *Roper v. Simmons,* 543 U.S. 551 (2005). Chad Voyles was an adult, and Ashlie Martin was a juvenile.

The government argues that a reason for this disparity in sentencing is because Chad Voyles "cooperated with the United States and received a departure based upon his substantial assistance." (Gov't brief at 18) The only way to offer Mr. Voyles a sentence less than the statutory minimum was through 18 U.S.C. § 3553(e), regardless of his "assistance." While the government's "substantial assistance" motion made the lower sentence possible, at sentencing the prosecutor could not provide much of an explanation for what constituted Mr. Voyles' "substantial assistance." The prosecutor advised the district court, "I will recognize – and I think Mr. Voyles in particular – that he did take responsibility for his actions. I think he had no choice, but he did take responsibility for his actions." (ROA Supp. I at 10) This does not differentiate him from either of his two co-conspirators, who both took responsibility for their actions. What *does* differentiate Mr. Voyles from his co-conspirators is that he was the only adult in the group.

Mr. Voyles did not provide sufficient "substantial assistance" to the government to justify a shorter sentence than that received by Ashlie Martin. "The substantial assistance regime is not a spoils system designed simply to reward a cooperative defendant; it is designed to benefit the government in its prosecution efforts." *United States v. Orozco,* 160 F.3d 1309, 1316 (11th Cir. 1998). The question is whether the district court has satisfied the requirement of 18 U.S.C § 3553(a)(6)'s

need to avoid unwarranted sentencing disparities based upon his sentence being 36 months shorter than Ms. Martin's 456-month sentence. Mr. Voyles' plea on January 6, 2023 did not prompt Ashlie Martin to enter a plea on July 26, 2023. As a juvenile, Ashlie Martin's case proceeded on a much different path than that of Mr. Voyles. The district court's decision in her juvenile case for her to be prosecuted as an adult was affirmed in the Tenth Circuit on January 20, 2023.[2] Her lack of success in convincing the court to treat her as a juvenile prompted her to enter a plea. Ms. Martin's adult case was not even filed until April 13, 2023, four months after Mr. Voyles plea. (ROA Vol. I at 10) She could not plead guilty as an adult until the case was filed, and she would have pleaded guilty whether or not Mr. Voyles cooperated. Her responsibility as a co-conspirator was never in question, based upon her own admissions and text messages. The government is unable to provide anything to show substantial assistance, beyond Mr. Voyles decision to plead guilty.

Nothing in Mr. Voyles' behavior warranted a shorter sentence than that received by Ashlie Martin. U.S.S.G. § 5K1.1 lists the following factors that the district court may consider when evaluating substantial assistance:

> (1) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;

[2] *United States v. Doe,* 58 F.4th 1148 (10th Cir. 2023)

(2) The truthfulness, completeness, and reliability of any information or testimony provided by the defendant;

(3) The nature and extent of the defendant's assistance;

(4) Any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;

(5) The timeliness of the defendant's assistance.

(U.S.S.G. § 5K1.1).

The district court made no specific findings on the question of substantial assistance. It only stated that it considered "the motion the government filed on your behalf" in the court's sentencing decision. (ROA Supp. I at 20) The "influence" that Ashlie Martin had on Chad Voyles, combined with his "substantial assistance," is not enough to explain the sentencing disparity between the two. *See United States v. Guevara-Lopez,* 147 F.4th 1174, 1185 (10th Cir. 2025) (court insufficiently addressed unwarranted sentence disparities; sentence found substantively unreasonable).

4. The district court found that Curtis Martin was a convicted sex offender who abused his daughter, both sexually and otherwise.

The government asks this Court to doubt Ms. Martin's allegation that her father sexually abused her.[3] The district court accepted the "likely sexual abuse during her childhood" when he imposed her sentence. (ROA Vol. III at 42-43) The court's factual findings regarding Ashlie Martin's sexual abuse are not clearly erroneous, especially given Mr. Martin's history of sexually assaulting his own children. This Court cannot be "left with the definite and firm conviction that a mistake has been committed" by the district court's factual finding. *United States v. Gilgert,* 314 F.3d 506, 515 (10th Cir. 2002) (and cases cited therein).

Although Dr. Heide truthfully agreed she lacked personal knowledge about the abuse, she described Ashlie Martin's candid expression of remorse as evidence that the sexual abuse occurred. (ROA Vol. IV at 29) She testified:

> [Ashlie Martin] is remorseful to some extent. I mean, she's – candidly she feels bad about her mom. With her dad she shows a relief. It is classic parricide offender. *There is relief because the abuser is gone.*

[3] Ms. Martin disagrees with the significance of the government's assertion on appeal that the defense expert "testified that some of the Defendant's allegations of sexual abuse 'may not be true.'" (Gov't brief at 9) Dr. Heide was not referring to her father's sexual abuse. (ROA Vol. IV at 27) As is always the case when one relies on self-reporting, everything reported may not be true. Dr. Heide certainly had no basis to question Ashlie Martin's reported sexual abuse, particularly given her father's confirmed sexual attraction to children and two previous convictions for sexual abuse and molestation of children.

(ROA Vol. IV at 29) (Emphasis added).

The doctor's findings confirmed Ashlie Martin's allegations of her father's sexual abuse. Acknowledging the evidence of sexual abuse, the government argued that this was not a motive for the murders, primarily because she did not send text messages describing sexual abuse. (Gov't brief at 10, footnote 3) Ashlie may have had more immediate motives for wanting her parents dead, such as wanting to escape, be with her boyfriend, or have a baby. According to Ashlie, she and Bryson discussed the murders weeks before "since it was the only way they could be together and raise their child…" (ROA Vol. II at 268) That hardly means that sexual abuse did not factor into her motives. Ashlie Martin was angry with her parents, but it is illogical and unreasonable to believe that she wanted them dead just because they did not like her boyfriend. (Gov't brief at 3) A lifetime of neglect and abuse led her to the tragic events of December 22, 2020.

Ashlie Martin never had significant counseling for the severe neglect and abuse she endured as a child. After being removed from the home due to her father's sexual abuse of children, she was returned to the family in which her father's parental rights had been terminated, as well as her mother who chose to support her husband over multiple allegations of sexual abuse during a twenty-year period. *United States v. Doe,* 58 F.4th 1148, 1164 (10th Cir. 2023). As a result, Ashlie Martin "never had the

opportunity to receive appropriate services" for her childhood trauma. (*Id.* at 1165) By all indications, Ashlie Martin's behavior while in custody has been exemplary. She seemed to be doing well under supervision and has expressed that her detention has been a positive experience. She even wishes that she had been locked up earlier for another reason so this never would have happened. (ROA Vol. IV at 55)

Ashlie's allegation of sexual abuse was but one aspect of generally abusive conditions that unquestionably led to a horrible childhood. Dr. Heide explained that neglect "has been found to be more damaging to children than abuse." (ROA Vol. IV at 27) Ashlie lived in a house that was considered "uninhabitable." (Aplt. brief at 5) She lived in eleven different places before her ninth birthday. (*Id.* at 2) The filthy environment made it difficult for Ashlie to keep herself clean, and the Oklahoma Department of Human Services was regularly called out to the Martin residence due to complaints of head lice so severe it left sores on her scalp, inadequate dental care that led to the need to pull her teeth because they were rotten, and poor school attendance. (*Id.* at 3)

Nothing can excuse the murder of Ashlie Martin's parents. But she did not want to see them dead simply because they did not like her boyfriend.

5. Ashlie Martin's influence on her co-conspirators failed to offset the mitigating evidence presented.

Dr. Kathleen Heide testified extensively at Ashlie Martin's sentencing. Dr. Heide is a Professor of Criminology at the University of South Florida and one of the most accomplished parricide specialists in the world. (ROA Vol. II at 397) As of December 17, 2023, her publications have been cited nearly 5400 times. (*Id.* at 398) She has authored two books specifically on the subject of parricide: Why Kids Kill Parents (Ohio State University Press 1992) and Understanding Parricide (Oxford Press 2013). Dr. Heide compiled an extensive list of mitigating factors for Ashlie Martin which was summarized and submitted as an attachment to Ms. Martin's opening brief. (*Id.* at 447-455) Dr. Heide considered one of the most important conclusions she reached was a risk assessment called the Youth Level of Supervision Case Management, YLSCMI. Two psychologists performed the test independently, and the scores were comparable. (ROA Vol. IV at 30) The test placed Ashlie Martin at a very low risk of recidivism, and Dr. Heide believed her tests to be "good prognostic indicators." (*Id.* at 31) This contrasts to those at a high risk to society; Ashlie Martin was not seen as a person who is callous, manipulative, or will not take

responsibility. (*Id.* at 30) In short, she is amenable to treatment, something that the district court failed to acknowledge when sentencing Ashlie Martin.[4]

The government states that Dr. Heide testified that Ashlie Martin was in the "moderate risk" category for reoffending in the future. (Gov't brief at 14) This is due in part to the doctor's inability to predict the future. In some ways, she admitted, these predictions are just educated guesses. Some of the literature compared predicting future dangerousness to the "flip of a coin." (ROA Vol. IV at 42) The "moderate risk" category analysis was based upon the assumption that Ashlie lacked family support. (*Id.* at 43). Dr. Heide did not believe that Ashlie had contact with her family while in jail. (*Id.* at 44) On the other hand, Ashlie has been able to find support from some of the inmates at the jail where she was at the time of Dr. Heide's interviews. In particular, she was attached to a "mother" figure at the facility who was supportive of Ashlie and made her feel safer than she had with her real mother. (ROA Vol. IV at 31) Another unknown factor is whether Ashlie will be able to participate in

[4] The district court likely erred in failing to give consideration to amenability of treatment when considering whether Ashlie Martin was to be treated as a juvenile or an adult for sentencing purposes. *See United States v. Doe,* 58 F.4th 1148, 1163 (10th Cir. 2023) (Hon. M. Briscoe, concurring in part and dissenting in part). The Supreme Court has repeatedly emphasized the significance of a juvenile offender's prospects for change as he or she grows up.

treatment programs while incarcerated. One thing is certain: Ashlie Martin's co-conspirators have demonstrated the ability to kill, and Ashlie Martin has not.

The Presentence Report calculated a total offense level of 43 for Ashlie Martin "because that is the highest that it can go." (ROA Vol. III at 15) Presumably, the district court reduced the offense level to 42 in order to impose a sentence of less than life. This was the same total offense level as both of Ms. Miller's co-conspirators. Before imposing a sentence of 456 months, the district court stated:

> In crafting [Ashlie Martin's] sentence I have considered and given great weight to the horrific and depraved nature of this crime; and the terrible impact on Ms. Martin's family and community. I've also considered, among other things, the Defendant's neglect and likely sexual abuse during her childhood, her persistent unstable home situation, the deplorable home conditions in which she lived, and notable mental, educational and intellectual deficits. In this regard, again I believe that the applicable state and tribal child welfare agencies failed her.
>
> The Court also considered the Defendant's instigating and manipulative roles in perpetuating these crimes. Not only is she responsible for the death of her parents, but her actions also severely damaged many other lives, including her co-conspirators, Chad Voyles and Brian Miller. She directly caused much damage to many people.

(ROA Vol. III at 42-43)

All three co-conspirators suffered from the effects of poverty and grew up in difficult circumstances. (ROA Supp. I at 8) The district court's primary justification

for the disparate treatment of Ms. Martin was her planning and alleged manipulation of her co-conspirators. (ROA Vol. III at 43) She certainly helped plan the murders, as each of the co-conspirators did. The government misinterprets Ashlie Martin's lesser culpability argument as a claim that she was not involved in the planning of the murders. (Gov't brief at 29) Of course she was. It is exactly what she pleaded guilty to doing. She admitted that it was her idea, and that she used her phone to text messages to her co-conspirators to plan and carry out some of the details. However, as pointed out by defense counsel, "[i]n the government's exhibit there are times when Ashlie gives direction to Chad. There are times when Chad gives direction to Ashlie in those text messages. It was a joint effort." (ROA Vol. III at 10) As the night wore on, Ashlie Martin's involvement lessened, and when it came time to kill Ashlie's parents, her co-conspirators carried out the murders without instructions from Ashlie.

The district court recognized Ashlie Martin's limited role when it refused the government's request to find that Ms. Martin was "an organizer, leader, manager, or supervisor" in the offense under U.S.S.G. § 3B1.1(c). The district court concluded: "I can't say that her role was such that it was what [the leader, manager, or supervisor] enhancement contemplates." (ROA Vol. III at 10) Her co-conspirators were free to refuse her request to kill her parents. The Commentary to U.S.S.G. § 3B1.1 clearly states that a "defendant who merely suggests committing the offense" is not subject

to the organizer/leader enhancement. Yet the district court found Ashlie's "instigating role" to be a primary aggravating factor. (*Id.* at 43) In truth, Ashlie Martin exercised little real control over the details of the plan. *See generally United States v. Zar,* 790 F. 3d 1036, 1058 (10th Cir. 2015).

There simply was not that much of a plan. For example, although Chad Voyles and Bryson Miller decided to obtain a taser and knives, they admitted that they never actually had a plan as to how they were going to kill Ashlie's parents until the time came to act. (ROA Vol. II at 269) Ms. Martin certainly did not tell them how to do it. There was no real escape plan. When asked on Facebook Messager where Ashlie planned to go after the murders, she responded that she did not know. (*Id.* at 119)

Ashlie Martin was Bryson Miller's girlfriend. As in any relationship, they had the ability to influence one another. There was no evidence that there was anything nefarious about any influence, such as Ashlie pretending to care for Bryson to secure his participation in the murders. *United States v. Robert,* 14 F.3d 502, 523 (10th Cir. 1993) (It was error for the district court to equate a girlfriend's relationship with that of a role of supervisor or manager). Whatever mitigation the district court found in Bryson Miller's decision to be Ashlie Martin's boyfriend hardly translated into aggravation for Ms. Martin. They were both immature juveniles; there was no evidence that either took advantage of their relationship in any manner that would

justify additional prison time. On the contrary, Bryson Miller had his own reasons to want to run away with Ashlie to raise their child. Mr. Miller lived in a "dope" house and his parents were meth addicts. (ROA Vol. II at 136) He never wanted to go home and would stay at Chad Voyles' house when he could. (*Id.*) It is not a stretch to say that Mr. Miller had his own reasons for carrying out the murders of Ashlie's parents. He wanted to run away with Ashlie and never go home again.

Ashlie Martin enlisted the assistance of others in this case because she knew she could not do it herself, regardless of how much she hated her parents for the years of abuse and neglect. If it were otherwise, she surely would have at least helped with the murders. When still in the house during her mother's murder, she could not even watch, much less participate. As horrible as her crime is, she is not the kind of violent person who can forcibly kill someone. Her co-conspirators clearly are. Just as the government contends that the murders would not have occurred without Ashlie Martin's involvement, the murders would not have been committed without her co-conspirators. They killed her parents, yet are serving shorter sentences than Ms. Martin. She contends that her 456-month sentence is both procedurally and substantively unreasonable. Her co-conspirators' likelihood of reoffending is limited only to what they might be willing to do should another person ask them to commit

murder (or any crime, for that matter). The district court knew that Ashlie Martin was not a person who would commit murder simply because she was asked to.

6. The district court's findings of influence are based upon notions that Ashlie Martin used sex to lure young men into committing murder. These assumptions are unsupported by any evidence.

Underlying the district court's finding of influence is the idea that Ashlie Martin held some kind of sophisticated sexual influence over her co-conspirators. The district court's evaluation has more basis in the biblical description of Eve's temptation of Adam than the facts of this case. Ashlie Martin was only seventeen years old and very immature for her age. She was in the tenth grade and experienced significant academic difficulties. She could not appreciate the consequences of her actions and her "plan" was naïve and stupid. There was absolutely no way that Ashlie Martin would have been able to escape and raise a child with Bryson Miller, but she never understood this.

Boiled to its essence, Ashlie Martin's crime was that she asked Chad Voyles and Byron Miller to kill her parents, and they agreed to do it. There was no evidence that she "tempted" them with her feminine wiles. Whatever motivation that her co-conspirators had for the murders, there is no evidence that Ashlie Martin deliberately took advantage of their motivation.

Much of what the government argues to be an improper influence on Bryson Miller is Ashlie Martin's pregnancy. (Gov't brief at 3) The government accuses her of using a "false pregnancy" to motivate her co-conspirators to assist her. (*Id.*) While Ms. Martin was not pregnant when tested after her arrest, there is no evidence to show that she did not believe herself to be pregnant prior to the murders. There was at least some corroboration of Ashlie Martin's belief. Her own mother had reason to express her belief that Ashlie was unfit to raise a child, and that she would not be permitted to keep the baby. (ROA Vol. II at 16, 28, 427) The government quotes from several of Ms. Martin's text messages about her parents and Bryson, but none are inconsistent with her belief that she was pregnant. (Gov't brief at 3-4) The district court did not comment on Ashlie's pregnancy and therefore made no factual finding that she had lied about it.

7. The district court failed to recognize Ashlie Martin's juvenile status to the extent required by the United States Supreme Court.

While the district court acknowledged that Ashlie Martin was a minor at the time of the offense (ROA Vol. III at 48), there is no evidence that the district court

gave adequate consideration to what it actually means to be a juvenile in the criminal justice system.[5] As articulated by the United States Supreme Court:

> Because juveniles have diminished culpability and greater prospects for reform, we explained, "they are less deserving of the most severe punishments." [Prior] cases relied on three significant gaps between juveniles and adults. First, children have a "'lack of maturity and an underdeveloped sense of responsibility," leading to recklessness, impulsivity, and heedless risk-taking. Second, children "are more vulnerable ...to negative influences and outside pressures," including from their family and peers; they have limited "contro[l] over their own environment" and lack the ability to extricate themselves from horrific, crime-producing settings. And third, a child's character is not as "well formed" as an adult's; [her] traits are "less fixed" and [her] actions less likely to be "evidence of irretrievabl[e] deprav[ity]."

Miller v. Alabama, 567 U.S. 460, 471 (2012) (internal citations removed).

The United States Supreme Court has recognized the lessened culpability of a juvenile offender many times. *Graham v. Florida*, 560 U.S. 48 (2010) likened a juvenile sentence of life without parole to the death penalty itself. *Miller,* 567 U.S. at 470. While Ms. Martin did not receive a life without parole sentence, under the facts presented, her 456-month sentence failed to recognize that "children are constitutionally different from adults for purposes of sentencing." *Id.* at 471.

[5] The district court referenced Ashlie Martin's status as a minor in passing, after sentence had already been imposed. The court simply stated that he had considered "the status of the Defendant as being a minor at the time of the commission of this offense." (ROA Vol. III at 48)

It was an abuse of discretion to impose a longer sentence for Ms. Martin than Chad Voyles, the adult conspirator convicted of murdering two people (setting one on fire while still alive). Ms. Martin's 456-month sentence was neither procedurally nor substantively reasonable. Defense counsel objected to the district court's decision to begin its sentencing calculation with what he described as an adult sentence. The base level of 43 is life, because under 18 U.S.C. § 1111(a), first degree murder carries a mandatory life sentence. Defense counsel argued that this was procedural error in light of Ashlie Martin's status as a juvenile offender. (ROA Vol. III at 50) Starting at level 43 failed to distinguish Ashlie Martin from an adult offender. While the district court ultimately settled on a range of 360 – life, this was the same range as her adult co-conspirator Chad Voyles and therefore failed to recognize her constitutionally protected juvenile status.

8. The evidence was insufficient to establish that Curtis Martin was a "vulnerable victim" under U.S.S.G. § 3A1.1(b)(1).

The evidence suggests that Mr. Martin was able to fend off the attack. Mr. Miller was not a particularly threatening person. His attorney described him as being a little over five feet tall and he weighed about 100 pounds. (ROA Supp. I at 45) Mr. Martin was able to fight Mr. Miller off and deflect an arrow that Chad Voyles fired in

his direction. (ROA Vol. II at 266) Neither Chad Voyles nor Bryson Miller mentioned Mr. Martin hobbling in with a walker or that he was hooked up to oxygen.

It took both young men to take down Mr. Martin. (ROA Vol. II at 266) After Mr. Martin deflected the arrow that Chad Voyles fired at him, he was able to pick it up and use it as a weapon to attack Miller and Voyles. (*Id.* at 267) Mr. Miller threw Mr. Martin to the ground while Mr. Voyles punched him, but this was not enough to disable the man. Mr. Voyles then used a broken wooden handle to beat Mr. Martin. (*Id.*) Mr. Miller had to hit him multiple times with a bat to slow Mr. Martin down. (*Id.*) This was *still* not enough to render him unconscious. It was not until Mr. Miller beat Mr. Martin over the head with a barbell that Mr. Martin finally lost the fight and collapsed to the floor. (*Id.*) He was still alive and breathing when Chad Voyles set the house on fire.[6]

There was certainly evidence that Mr. Martin was not in good health. This is not the standard for a vulnerable victim enhancement. "In order to classify a victim as 'vulnerable,' 'the sentencing court must make particularized findings of vulnerability.'" *United States v. Bronson,* 54 F.3d 673, 676 (10th Cir. 1995). The district court erred in

[6] The medical examiner's report indicates that Curtis Martin's probable cause of death was "thermal burn injuries with smoke and soot inhalation." (ROA Vol. II at 149) Mr. Martin was still breathing when Chad Voyles set the house on fire.

equating "health problems" (even "severe" ones) with vulnerability as defined in the Sentencing Guidelines. (ROA Vol. III at 16) While there was evidence that Mr. Martin had used a walker before, there was no evidence that he was using one when he was attacked. There was no evidence that Mr. Martin was using oxygen when he arrived home on the day he was murdered. There was no oxygen equipment found anywhere. Toni Strickland was Curtis Martin's sister, and she was not being truthful when she claimed that Mr. Martin needed oxygen full-time. (ROA Vol. II at 270) If this had been true, there would have been oxygen equipment present.

The government asserts that Ms. Martin "agreed her father used a walker and received disability for Social Security," but that is inaccurate. She actually only agreed to the prosecutor's "summary of her *conduct*" when she described her involvement in the conspiracy. (ROA Vol. I at 35) The assertion that Mr. Martin used a walker and received Social Security disability were the prosecutor's words, not Ashlie Martin's.

None of the cases cited by the government support the conclusion that it necessarily follows from one's poor health that he is a "vulnerable victim" under U.S.S.G. § 3A1.1(b)(1). In *United States v. Checora,* 175 F.3d 782 (10th Cir. 1999) (Gov't brief at 43), the Court suggested that the victim was intoxicated enough for his ability to defend himself to be impaired, and intoxicated enough for the defendants to realize how intoxicated he was: "Murray arrived at Ms. McKinley's residence already

intoxicated and continued to drink throughout the early morning hours." *Id.* at 789. In other words, simply describing one's condition as "intoxicated" is not sufficient to establish on as a vulnerable victim. The intoxication must impair one's ability to defend himself, and the same is true of a physical infirmity, such as being overweight. Mr. Martin's disabilities did not impair his ability to defend himself. At least, there was insufficient evidence of actual impairment.

If being fat satisfied U.S.S.G. § 3A1.1(b)(1), most Americans would be considered "vulnerable victims." Approximately 40% of Americans over the age of 20 are classified as obese.[7] It does not follow that an obese person is a vulnerable victim because of his weight. Neither of Ms. Martin's co-conspirators suggested that Mr. Martin was an easy target or even that he was using a walker or oxygen when they attacked him. In fact, as described in Ms. Martin's brief, Mr. Martin put up a fight, and did not die even after being struck on the head with a 25-pound barbell.

The district court concluded that Mr. Martin was "unable to escape the situation" that resulted in his death. (ROA Vol. III at 16) As pointed out in Ms. Martin's brief, this is true of every homicide. A person who escapes an attack is, by definition, not a murder victim. This fails to distinguish Mr. Martin from anyone else.

[7] https://www.cdc.gov/nchs/fastats/obesity-overweight.htm

CONCLUSION

This case must be remanded for resentencing.

Respectfully submitted,

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s/ *Stuart W. Southerland*

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I hereby certify that the digital version of this brief and attachments is an exact copy of any paper copy required to be submitted to the court. It has been scanned by the most recent version of Symantec Endpoint Protection and according to the program is free of viruses.

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June 2026, I electronically filed this brief, with attachments, in the Tenth Circuit using the ECF System, which transmitted a Notice of Docket Activity to the following ECF registrants:

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